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RIGHT OF WIFE UNDER ENABLING ACT TO SUE HER HUSBAND FOR A TORT.

A recent decision by the Supreme Court, affirming the Court of Appeals of the District of Columbia, by a majority of four to three, Justice Harlan, with whom concurred Justices Holmes and Hughes, dissenting, discusses the question of the right of a wife to sue her husband for assault and battery, under the District of Columbia Enabling Act. Thompson v. Thompson, 31 Sup. Ct. 111.

That act reads as follows: "Married women have power to engage in any business, and to contract, whether engaged in business or not, and to sue separately upon their contracts, and also to sue separately for the recovery, security or protection of their property, and for torts committed against them, as fully and freely as if they were unmarried." Then the statute goes on to provide that they may be sued separately on their contracts, and for wrongs committed by them, before or during coverture, as fully as if they were unmarried.

The majority held that no action lay against the husband for a tort committed on the wife. It has been similarly held under the Texas enabling act, at least while the marriage existed. Sykes v. Speer, 112 S. W. 422.

When the Thompson case was decided by the District of Columbia Court of Appeals, it was said, *arguendo,* that, though the statute gave the wife power to contract with her husband, yet the same section did not authorize her to sue him for a tort. Thompson v. Thompson, 31 App. D. C. 557.

Justice Day, speaking for the majority, said nothing as to this, but discussed only the purpose of the statute with respect to the right to sue separately, saying: "The limitation upon her right of action imposed in the requirement of the common law that the husband should join her was removed by the statute, and she was permitted to recover separately for such torts as freely as if she were unmarried. The statute was not intended to give a right of action against the husband, but to allow the wife, in her own name, to maintain actions of tort, which, at common law, must be brought in the joint names of herself and husband."

It is true that the statute is not, *in terms,* creative of any right of action which did not exist at common law, except upon contracts, and this did not there exist, because, the existence of the wife being merged in that of the husband, she had no contractual capacity.

Therefore, taking the words of the statute literally, there were two powers granted—one to contract, the other to sue in her own name without joining her husband.

But it is urged by the dissenting opinion that the married woman by the statute has as full right to sue as if she were unmarried. It is not said, however, that she has the same rights of action, as if she were unmarried, and it is certain only, that as to each and every right of action she possesses she may exercise her privilege of suing in her own name "as fully and freely" as if she were unmarried.

The words "as fully and freely as if they were unmarried" are construed by the dissent to create some right of action which without them would not be created. But it is not unreasonable to make them merely refer to the exercise of the privilege, which exists in the granted power, viz: the power to sue separately.

Mr. Justice Harlan only disagrees with the majority, because he considers that the words of the statute leave no "room whatever for mere construction," and yet he dwells upon the significance of the words "as fully and freely as if they were unmarried" as aiders in the demonstration that the statute does something more than create a power to sue separately.

It is plain, we think, that they may have another office and that they may be a part of the statute appropriately, whether any new right of action is created or not. They seem, indeed, thrown in more to emphasize

the fact that she is absolutely free to exercise her privilege and not to extend rights as between the spouses further than this.

Possibly this decision is not of such very great general importance, because, at bottom, there is hardly a doubt but all of the Justices agree to the principle that these enabling acts, overturning, as they do, the established policy of the common law, should have applied to them the strictest construction.

This case shows, however, something more than the overturning of common law policy. It is American policy that the relation of husband and wife should be a confidential one, and particular criminal acts by a husband against his wife and family are defined by statute. She is not left remediless.

We think it well said by Justice Day, speaking for the majority that: "Had it been the legislative purpose not only to permit the wife to bring suits free from her husband's participation and control, but to bring actions against him also for injuries to person or property, as though they were strangers, thus emphasizing and publishing differences which otherwise might not be serious, it would have been easy enough to have expressed that intent in terms of irresistible clearness."

The Justice speaks strongly in saying, in effect, that the right for her to sue him implies they are strangers, while the right for her to exercise her privilege to sue without his participation or interference does not contemplate that they are strangers. They would not seem any more strangers in this than in her absolute right to contract without his consent. As to what is not expressed, the wife has only a common law status.

We may further say that the phrase "as fully and freely as if they were unmarried" qualifies both the right of contract and the right to sue separately, and it is clear, that if nothing was said about suing separately, the phrase would not create any right to sue him. Certainly, if a third person were being sued in contract, the husband would have to be joined, but for what follows the reference to contracts.

NOTES OF IMPORTANT DECISIONS

CONSTITUTIONAL LAW.—UNILATERAL RIGHT OF APPEAL IN CRIMINAL CASES AS CONTRARY TO FOURTEENTH AMENDMENT.—It was contended in U. S. v. Heinze, 31 Sup. Ct. 98, that, inasmuch as by the Act of March 2, 1907, the government is given the right to appeal to the Supreme Court to review an adverse ruling upon any indictment, and a defendant is only given the right in the Circuit Court of Appeals and only at the end of a trial, there is both a denial of due process of law and of the equal protection of the laws.

Justice McKenna, speaking for the Court, said: "We shall not follow the somewhat roundabout argument to establish the identity of those two rights. If we should yield to the argument, it would necessarily follow that if defendant has not been denied due process he has not been denied the equal protection of the law, and this court has decided that the right of appeal is not essential to due process of law. Reetz v. Michigan, 188 U. S. 505. The provisions have definite application, and even if the explicit clause of the 14th Amendment, forbidding a state to deny to any person within its jurisdiction the equal protection of its laws can be said to apply to the United States, it can have no broader protection of its laws, can be said to apply to the states. Assuming, then, and assuming only, not deciding (see the District of Columbia v. Brooke, 214 U. S. 138), that Congress may not discriminate in its legislation, it certainly has the power of classification, and the act of March 2 is well within such power."

It has seemed to us, that the opinions of Justice McKenna very often, if not generally, seek to impale advocates of contentions to which he is opposed on the horns of a dilemma. He seeks what we think may be called the Socratic argument, committing himself to as little as possible in the disposition of a controversy, which method while, perhaps, very effective in knock-out blows, is not over-illuminating in discussion of principle.

Nevertheless we gather from the opinion that it is not a denial of due process of law for one to be denied an appeal, and that it may be granted to one party in a case and not to the other. We doubt the validity of such a discrimination, when stated thus broadly, and think it was unnecessary to have so held. We do think the act of March 2 was valid because there is no discrimination or classification in it at all. The United States had the right at the end of a case to appeal immediately to the Supreme Court where the construction or application of the Constitu-

tion or the constitutionality of a statute is involved, and so has a defendant, but he has to go by way of the Circuit Court of Appeals, because he may raise questions other than the above which the intermediate court may settle in a way to show the defendant has no interest in constitutional questions. The Supreme Court is merely a court of dernier resort to each and for each at the end of the case for it or him, as the case may be, in the court below. Therefore the socratic method, seeking to limit itself very closely, really has generalized too greatly.

INHERITANCE TAX.—CONSTITUTIONALITY AS APPLIED TO SURVIVING WIFE'S SHARE IN COMMUNITY PROPERTY.—The California Supreme Court ruled that "the interest of a widow in the community property of herself and her deceased husband was subject to be taxed under a law of that state, which taxed all property passing by will or in case of intestacy from any person who may die seized or possessed of the same."

The federal supreme court held that it being within the power of the state as not in conflict with the contract clause of the federal constitution to impose such a tax, and the construction of the California statute being for its own courts, the ruling was affirmed. Moffitt v. Kelly, 31 Sup. Ct. 79.

Mr. White, then Associate Justice, says: "When the contention (of conflict with such clause) is concretely considered it involves but a single proposition; that is, that the State of California could not, without violating the Constitution of the United States, impose a tax on the share of the wife in the community property on the occasion of the cessation by the death of the husband of his dominion and control over the common property, and the consequent complete vesting in enjoyment of such share in the wife."

It is then said that it is within the state's power of selection and classification "to select the vesting in complete possession and enjoyment by wives of their shares in community property, consequent upon the death of their husbands, and the resulting cessation of their power to control the same and enjoy the fruits thereof."

Justice White said that it made no difference under this right of selection that the wife's right in the community property might be "a vested right which could not be impaired by subsequent legislation."

If the rule works the same as where the husband survives the wife, then it would seem that an inheritance tax could be imposed where a life tenant dies and the remainderman comes into possession, or where there is any other "vesting in complete possession and enjoyment." No will or intestacy could have any relation to the acquisition of such possession or enjoyment. The fact that the wife only comes into possession and enjoyment on the death of the husband instead of at a fixed time or upon the happening of some other event is as immaterial in respect to the rights of the wife as in any other remainder interest.

It seems to us it would be in conflict with the contract clause to say an inheritance should be imposed on the cessation of a tenancy for life, unless it be within the power of the state to tax, as in inheritance taxation, any and every coming into possession and enjoyment of a vested right, arising out of contract, where possession and enjoyment are not concurrent with the vesting. Certainly to do this after a contract is made would be greatly to impair its value.

STATUTES.—CONSTRUCTION IN APPLICATION OF STATE LAW TO FEDERAL RESERVATIONS.—The full text of the decision in the Panama libel case, U. S. v. Press Pub. Co., appears in our contemporary, the New York Law Journal of January 16, 1911. One of the striking things in the very forceful opinion of the Chief Justice is what he says about the application of State law to the punishment of crime on a federal reservation. It must be enforced under the federal statute applying the state law to the locus in quo in the sense the State intends, as shown by State construction, it shall be enforced in the State outside of the reservation. And the decision goes even further than that, as we read it, for we understand it to say, that if there be venue for a prosecution in the State outside of the reservation as well as on the reservation, and only one prosecution is allowable, the prosecution should be left to the State government. This part of the decision says: "We think plainly established: First, That adequate means were afforded for punishing the circulation of the libel on a United States reservation by the State law and in the State courts without the necessity of resorting to the courts of the United States for redress. Second, That resort could not be had to the courts of the United States to punish the act of publishing a newspaper libel by circulating a copy of the newspaper on the reservation upon the theory that such a publication was an independent offense, separate and distinct from the primary printing and publishing of the libelous article within the State of New York, without disregarding the laws of that State and frustrating the plain purpose of such law, which was that

there should be but a single prosecution and conviction."

The underlying theory here is, that as only by the federal law, state interests, and not federal interests, are looked after, ex necessitate rei, the government should lie still only when the state needed its aid. Perhaps another view is that so far as mere rights and wrongs are concerned and so far as moral duty is involved and there is no interference with mere governmental administrative machinery, this entire country is a sort of Sahara with nobody in it to be injured by another. Our government as a pure agency of the states is entitled to say you must not interfere with me in the performance of my delegated duty or I will lay upon you the strong hand of power. You let my machinery alone and I will let you alone, unless I have to act as to those things which the state cannot take care of. When I am in the occupation of territory withdrawn from state control, I apply its law for its benefit and in the way it wishes it applied. It would look like the same rule should govern federal courts in relieving state courts of the burden that would remain on them were there no jurisdiction in diversity of citizenship—more especially as the latter burden is merely one in concurrent, and not exclusive, jurisdiction.

WHEN AND IN WHAT CASES MAY THE HUSBAND RECOVER REAL ESTATE CONVEYED BY HIM TO HIS WIFE DURING THE MARRIED STATE?

The authorities directly bearing on this subject are not multiplied but decisive. At common law the husband was presumed to be the stronger party to the marriage union.[1] The burden was placed on him to show that a conveyance to him by his wife was voluntarily and fairly made.[2] But it required an extraordinarily aggravated case, for the husband to establish a trust in, or obtain relief against a deed he had made to his wife, on account of her common law disabilities and the presumption that his conveyance to her was an advancement for her support.[3] The purpose of this article is to show that where the wife has, by simulated affection and feigned demonstrations of love, obtained property advantages over the husband for the purpose of swindling or abandoning him, equity will afford relief.

The presumption of the husband's superiority and the wife's inferiority clearly grew up in the development of the common law where her identity was lost in that of the husband's. It was the natural fruit of the dark ages, as well as of the days of the Roman Empire, when woman was in reality the slave of man and enjoyed few, if any, rights. And while that presumption, in a more refined sense, may still be justly recognized, yet it cannot be given the wide range it formerly occupied, and must be subjected to conspicuous exceptions in everyday life, in this modern age of civilization and marvelous progress. The proverbial "boss" of the household, with his surly demeanor, whose voice is law and whose comfort is paramount to all other considerations, may still be found,—while, on the other hand, the "man of the house" with *her* rasping tongue and untrammeled dominion is not entirely extinct on American soil. But the world has advanced. Marriage is no longer the mere swallowing up, as it were, by the husband of all there is or ever was of the woman's identity. She has been afforded illimitable opportunities, and proved herself worthy thereof. She has acquired greatness in literature, art and science. She has achieved success in professional pursuits and business enterprises. Married women have been emancipated by statute in most of the states. They may contract as to their separate estates. They may conduct business in their own names. A great orator, in a public lecture, turning to the women present, once said: "The ornaments that you bear upon your persons to-night are but souvenirs of your mothers' bondage. The chains around your necks and the bracelets clasped upon your wrists by the thrilling hand of love have been changed by the wand of civilization from iron and shackles to shining, glittering gold."

(1) Schouler, Dom. Rel. pp. 10, 51; Crawford v. Crawford, 56 Pac. 94.
(2) See cases cited in note 16 hereto.
(3) See cases cited in notes 6 and 7 hereto.

It is no more than just that married women should now respond for their deceptions practiced upon their husbands as well as for those practiced upon others. For the purpose of presenting this proposition, the author desires to briefly recur to some of the general principles leading up to the subject under discussion.

General Rules.—Where the husband expends his own money and labor and buys real estate therewith and causes the title to be placed in the wife's name, under an oral understanding that she hold the same for him in trust, and the rights of third persons not being affected thereby, as a rule, he cannot establish a trust.[4] While the general doctrine, in most jurisdictions was that, where on the purchase of real property, the conveyance of the legal title was taken in the name of one person, and the purchase money was paid by another,—a resulting or presumptive trust arose, in favor of the one paying the purchase money;[5] yet this rule had its exceptions. For instance, if the person in whose name the conveyance of the property was taken, was one for whom the party paying the purchase money was under a natural or moral obligation to support, no resulting or presumptive trust arose from the fact of the payment of the purchase money; but, on the contrary, the transaction was regarded, prima facie, as an advancement for the benefit of the grantee under the conveyance.[6] This doctrine of presumptive advancement has been recognized as expressly applying to the case of a purchase by a husband in the name of his wife.[7] And even if there is a verbal understanding that the wife hold the property in trust for the husband, it does not ordinarily avail much, as there are statutes in most states requiring that such a trust, being an express one, must be in writing,[8] or requiring that the party declaring the trust must be capable of making such declaration, and in the absence of statutes removing the common law disabilities of a married woman, she is generally incapable of making such a declaration or of becoming a trustee by parol.[9] If she has capacity to make a binding contract of this kind, it cannot usually exist by virtue of a resulting trust, but must be under an express trust; and where the statutes forbid the creation of an express trust, by parol, the husband's claims would still be defeated.[10] The author does not overlook the fact that parol evidence is admissible to establish a trust, even against a deed absolute on its face, if it would be a fraud to set up the form of the deed as conclusive.[11] But where a conveyance in trust is made voluntarily, without solicitation or undue influence, a mere promise to hold in trust is usually within the statute of frauds.[12]

Husband Generally Presumed to be the Stronger Party.—It must be conceded that it is much more difficult for a husband to annul a deed gratuitously made to his wife, than it is for her to recover property she has conveyed to the husband. As heretofore suggested, the rules of the common law recognized the husband as the superior party in the relation of husband and wife.[13] In an interesting Nevada case,[14] the wife had left the husband partly on account of his failure to provide and partly because of his extravagant use of profane language.

(4) Murray v. Murray, 153 Ind. 14. But see Bartlett v. Bartlett, 15 Neb. 593, 19 N. W. 691.

(5) Hill Trustees, 4th Ed. 91; Elliott v. Armstrong, 2 Blackf. 198.

(6) Hill Trustees, 4th Ed. 97; 2 Washburn Real Prop. 4th Ed. 469.

(7) Hill Trustees, 4th Ed. 98.

(8) Sec. 3391, R. S. Indiana 1901; there similar provisions in most of the states.

(9) 2 Washburn Real Prop. 4th Ed., pp. 204-205.

(10) Montgomery v. Craig, et al., 128 Ind. 48. Perry on Trusts, 3rd Ed., Vol. 1, Sec. 51, after discussing the perplexing questions arising where a married woman should come into control of an estate charged with a trust, says: "Subject to these inconveniences, a married woman can always be a trustee; and she may even be a trustee for her husband, as well as her husband for her, and courts will find some means to enforce the trusts; but they will not appoint women to such offices, etc." Washburn on Real Property, 4th Ed., Vol. 2, pp. 204-5, says: "In the first place all persons capable of holding real estate may be trustees, with the exception of married women who are so far restricted that they cannot ordinarily be trustees for their husbands."

(11) Davies v. Otty, 35 Beavan, 208; Damschroeder v. Thias, 51 Mo. 100.

(12) 1 Perry on Trusts, 3rd Ed., Sec. 226.

(13) See cases cited in note 1.

(14) Crawford v. Crawford, supra.

They entered into a reconciliation, however, and she returned on the condition that he convey to her certain real estate for her support in the event he failed to keep his promises. Subsequently they separated again. The husband undertook to have the deed set aside. There was no evidence of any undue influence, or that the wife brought to bear any pretended affection or false demonstrations of love in order to cheat the husband out of his property. The court took the position that under such circumstances, and in view of the fact that the husband was presumed to be the superior party to the marital union, no relief could be granted. The Court of Chancery of New Jersey, in an action by the heir of deceased wife to set aside a deed made by the latter in her lifetime to the husband, uses this strong and lucid language: "The most dominating of all relations is that of the husband over the wife. *There are, of course, exceptional cases when the will of the woman may control.* The relation is so close, the trust of the wife so absolute, her dependence so entire, it may be her fear so abject, while the dominion of the husband is so complete, his influence so insidious, yet so controlling that equity regards all such transactions with a jealous care, and subjects them to the severest scrutiny."[15]

The law is firmly settled that the burden is upon the husband to show that a transfer to him from his wife was made freely, and that the transaction was fair and proper,[16] while a consideration of love and affection will support a deed from husband to wife, no rights of third persons intervening.[17]

Undue Influence and Perfidy of Wife.—But the general doctrine that courts of equity will cautiously scrutinize transactions between parties sustaining those relations in which confidence is naturally inspired, will, after all, be invoked against the wife as well as against the husband, where the facts warrant the same. Equity will protect against fraud in cases of physician and patient, spiritual advisor and penitent, vendor and vendee, husband and wife, and persons occupying their position,[18] and in other confidential and fiduciary relations,[19] although courts of chancery have been more frequently called upon to protect the wife than the husband.

The courts, however, recognize that in many instances woman is the controlling power in the domestic relation. As the Supreme Court of Indiana once said: "That the husband is usually the stronger may be true; but that *he is not always* the dominating force in the marriage union is known from many well authenticated instances extending from the present back to the time of Delilah. A few of these have gotten into the books."[20] That the statute of frauds cannot be used as an instrument to protect or aid a fraud is a rule that applies here as in any other case.[21] Of course, mere solicitations or arguments on the part of the wife which appeal only to motives of natural affection and gratitude do not

(15) Hall v. Otterson (N. J. Eq.) 28 Atl. 907.

(16) Hovorka et al. v. Havlik et al., 93 N. W. 990; Wales v. Newbold, 9 Mich. 45; Appeal of Darlington, 86 Pa. 512, 27 Am. Rep. 726; Boyd v. De La Montagnie, 73 N. Y. 498, 29 Am. Rep. 197; Paulus v. Reed (Iowa) 96 N. W. 757; Spargur v. Hall, 62 Iowa 498, 17 N. W. 743; Earhart v. Holmes, 66 N. W. 898.

(17) Paulus v. Reed, 96 N. W. 757.

(18) Presumption of undue influence as to conveyances by a man to a woman with whom he was sustaining illicit sexual relations. Shipman v. Furniss, 69 Ala. 555; 44 Am. Rep. 528; Leighton v. Orr, 44 Iowa, 679; Hanna v. Wilcox, 53 Iowa 547, 5 N. W. 717; Dean v. Negley, 41 Pa. St. 312, 80 Am. Dec. 620.

(19) Pomeroy Equity Jurisprudence, 3rd Ed., Vol. 2, Sec. 963.

(20) Basye v. Basye, 152 Ind. 172.

(21) So the rule was settled in England that if a negotiation for a marriage had begun, the woman should, while it was pending, without the knowledge of or notice to the intended husband, make a voluntary conveyance or settlement of her property, and the marriage should be completed by him in ignorance of the transfer, such conveyance or settlement would be a fraud upon the husband's marital rights of property and would be set aside by a court of equity. Countess of Strathmore v. Bowes, 1 Ves. 22, 1 Lead Cas. Eq. 405, 611, 618, and notes, etc. But, as Pomeroy, id. Sec. 920, says: "This rule has been necessarily abrogated by statutes in many states which destroy all rights and interest of the husband in the property of the wife.

(22) Stulz v. Schaeffle, 18 Eng. L. & Eq. Rep. 576; in re Jackman's Will, 26 Wis. 104.

constitute undue influence.[22] But where the wife with fraudulent design, induces her husband by such appeals deceptively made, to deed property to her on the basis that it is her due under the marital relation, —she in reality intending to abandon him as soon as she procures the conveyance,— equity will annul such transfer. This doctrine is found in some old, but not antequated English cases, and has been adopted in modern decisions.[23] In Basye v. Basye,[24] the complaint disclosed the following state of facts: The wife had treated the husband coldly for a long time. She suddenly became profuse in her professions and demonstrations of love, kissing and caressing the husband and promising to be a dutiful wife. She did this in furtherance of an evil design, and while so showering her counterfeited affection on him, begged and persuaded him to put the title of their property in her name alone, which was then in their names by the entireties. The husband was in love with his wife. He desired peace, concord and affection. When he had succumbed to her wishes, she deserted him and instituted suit for absolute divorce. The Supreme Court of Indiana, in reversing the trial court, decided that this complaint stated facts sufficient to constitute a cause of action.

In these cases, the courts take the position that the wife owes the husband the utmost good faith and frankness; that there exists between them a relation of special confidence and trust and where that confidence is abused equity will interfere.[25] The false representation of present love, the promise, the kiss and caress, in the Basye case amounted to the representation of a present fact. A present state of mind has been held to be a present fact.[26] While a mere promise to do something in the future is not ordinarily the representation of a fact,[27] and while the mere violation of a parol agreement with reference to real estate, is not sufficient of itself to predicate fraud,[28]—yet where the promise is surrounded by other acts and facts, breach of trust and confidence, indicating a scheme of fraud, a different rule arises.[29] As Judge Kent says: "In cases of numerous and complicated facts, the fraud, which should vitiate is generally sought in vain in any one place, but lurks intangibly in the whole transaction. It may be deduced not only from deceptive or false representations, but from facts, incidents, and circumstances, which may be trivial in themselves, but decisive evidence in the given case of a fraudulent design."[30]

In Brison v. Brison,[31] a California case, the husband decided to go to Arizona and engage in business, in an effort to raise money to pay off a mortgage on his real estate. He was desirous of protecting his wife in the event he should die and contemplated the making of a will. She importuned him to deed her the property, promising to reconvey on demand. He made her a deed absolute in form, without any acknowledgment from her. She refused to reconvey. It was averred that this promise of the wife by which the husband was induced to make the deed was *in bad faith* and *false* and *made to deceive him*. The court sustained the husband's complaint to compel reconveyance. This case involved a statute of that state which provided in substance as follows: That either husband or wife could enter into transactions with each other, or with others, respecting property; subject, in transactions between themselves, to the general rules which control the actions of persons

(23) Evans v. Carrington, 2 De Gex F. & J. 481; Evans v. Edmunds, 13 C. B. 777; Basye v. Basye, supra; Brison v. Brison, 75 Cal. 525, 17 Pac. 689; Meldrum v. Meldrum, 15 Col. 478, 24 Pac. 1083, 11 L. R. A. 65; Stone v. Wood, 85 Ill. 603.

(24) 152 Ind. 172.

(25) 2 Pom. Eq. Jurisp., Sec. 963; Schouler Husb. and Wife, Section 403; Bigelow on Frauds (1888) p. 353.

(26) See p. 175 of opinion in Basye v. Basye, supra; also Bigelow on Fraud, (1888 ed.) pp. 483-4, there cited.

(27) Foley v. Cowgill, 5 Blackf. 18; Burt et al. v. Bowles et al., 69 Ind. 1; Smith v. Richards, 13 Pet. 26.

(28) Barry v. Hill et al., 31 Atl. Rep. 126; Orth et al. v. Orth et al., 145 Ind. 184, 9200.

(29) 1 Story Eq. Jurisp. 201; 2 Kent 484; Robinson et al. v. Reinhart et al., 137 Ind. 674, 681-2.

(30) Kent, supra.

(31) Cited in note 23.

occupying confidential relations with each other, as defined by the title on "Trusts" in the statutes of that state. But the court also recognized the proposition contended for in this article. In speaking of that statute, the court, very apropos, said: "It is not surprising, that in taking away the wife's common law incapacity to contract, the legislature should have thought it prudent to throw around her the safeguards which arise from the trust relation. Possibly, at first view, it might seem strange that it should have been thought necessary to accord the same protection to the husband. *Perhaps this is to be regarded as an acknowledgment of woman's position in modern society.*"

A married woman's contractual powers under the statutes of various states, and the breaking of the shackles of her common law disabilities by legislation, have given her greater independence of mind and action, to which she is justly entitled; and she should be restrained by the same salutary principles that operate against the misdoings of her husband. But with the impediment of common law disabilities, woman has been a potent factor in the world's life. History is replete with instances where, by force of character and willpower, by strength of mind, by bewitching entreaties and deceit, by the arts of coyness and cunning, she has exercised a dominating and directing influence in the lives of men and nations. That she has had a part in the course of human events is not at all discredited by the biblical account of Adam and Eve; and other accounts in the Sacred Book show that she has sometimes wielded a molding hand on human destiny. History speaks for itself on this proposition; and many such instances, involving tragic as well as inspiring scenes, affecting crises in governments and the future of ruling heads, readily suggest themselves to the average mind without being catalogued herein.

Again turning to the books, we come to the case of Meldrum v. Meldrum,[32] which is highly entertaining. There the wife had nothing at the time of the marriage. The husband possessed in realty and personalty about $50,000. They lived together about fifteen months. She grew cold and indifferent. He was infatuated with her. Moved by her repugnance for him, she determined to abandon him, but conceived the plan to obtain as much of his property as she could before leaving him. The evidence disclosed the following conversation between the wife and her mother: "Polly, you will have to be careful about Andy, how you talk to him, and behave nicely to him, and get that $10,000 out of him," to which the wife replied: "O, you leave it to me. I know how to work him. I'll get all I can out of him, you bet." She told another witness that she intended to get all she could from Andy and then "skip." On another occasion she said to her mother: "Mamma, I can't stand it to live with him. I can't wait until February." To which the mother replied: "Try to love him, and wait until the first of February, and then he will get his money. Then you can go to Europe or New York, and send him a divorce, and have a good cry, and that will be the last of it." On another occasion, when he had gone to the mine, which he owned, she said to a witness: "Nettie, I just hate him. I just shiver when he touches me. If he would bring his money home, honest to God, I'd rob him and skip." Instead of giving her the money, he deeded her property in Denver worth $12,000. She had cried and begged him to make this conveyance. They moved into the property, and scarcely had the carpets been laid, than upon the pretext of some slight disagreement with reference to the use of a horse and buggy he had purchased for her recreation, she drove him from the house and announced she would sue him for divorce She then wrote him a letter renouncing any love for him and suggesting divorce as the best way to end their troubles. She afterwards brought divorce proceedings. The court in setting aside the deed, said: "That appellee (the husband) acted fool-

(32) 15 Col. 478, 24 Pac. 1083, 11 L. R. A. 65.

ishly will not be denied. He with his strong passion and ardent love, was not able to cope with her. She, with her deceit and false professions of love, held *complete mastery over him*, which she did not fail to exercise to her great benefit, and his great disadvantage."

Here was a woman contriving a snare to despoil her husband, encircling him, as it were, with her smiles, wooing him with lying lips, until she swayed his stalwart frame, and he believed they were again renewing the plighted faith. He worshiped her. He saw the sunrise of a happier day. He deeded her the property to satisfy her whims and importunities. Then, like a serpent, she shrinks away. His hopes are blasted. She has slyly robbed his confidence and filched his purse. His shock is greater than that of the victim of the burglar or thief. Not alone has he been pilfered of his property, but his heart has been stabbed. In his infatuation for his wife and implicit faith in her integrity, he has been made but a pliant, ridiculous toy in her cunning and dexterous hands. Why should not equity interfere?

So gifts made by the husband, while sick, to the wife, have been set aside at the suit of the executors of the husband's estate, after his death, because of the undue influence exercised by the wife over the husband in procuring the conveyance.[33] And equity will specially intervene where either the husband or wife become untrue to the other and by deception obtains an unjust advantage over the other. Thus, in Stone vs. Woods, an Illinois case,[34] it was held at the suit of the husband that a deed procured by the wrong of the wife to be made to a third person for her benefit would be set aside in equity. In that case the husband and wife lived in Galesburg. He went to Bloomington to work. She wrote him that if he would put the property in her name, she would sell it for $1800, pay his debts and come to him, and they would then buy a new home. He deeded her the property, trusting her as a loyal helpmate. She then conveyed the property to a man by the name of Stone, who had knowledge of the fraud. The court very promptly ordered restoration of the title and an accounting of the rents and profits. The wife had made this arrangement with her husband for the purpose of cheating him both financially and maritally.

Here was another woman of perfidious designs, debased in character, but able to convince and control her husband, on account of his confidence in her honor. She held out to him, in the desert of their financial misfortunes, the mirage of a happy home, free from the shadow of debt. By stealth and treachery she would betray him for the sake of an unholy purpose, while, he "by the sweat of his face" struggled on in another city that she might be comforted and maintained. Little did he dream that this "shell" or imitation of a woman was laying the foundation for his financial ruin and the ultimate razing of his home! Despicable conduct—perfidy immeasurable! Words are not biting, pungent or scathing enough to properly denounce such nefarious infamy!

The case of Ditsch et al vs. Timm et al,[35] while not squarely in point, is illustrative in a measure of the general ideas advocated in this article In that case the wife was a strong woman, physically and intellectually, had been divorced twice and was an "ex-saloon keeper." Her husband had children by previous marriage, who quickly took "flight" after this last adventure of their father. He became ill, and she persuaded him to deed his properties to her as her due and to avoid litigation and expense in the event of his death. She did not call in his children at the making of these conveyances, although they lived close by. At the suit of the children, after the father's death, these deeds were set aside on account of undue influence.

Fraud is infinite, and the fertility of man's mind and ingenuity so boundless, that equity cannot fix any standard tables of measurement by which to determine every case. Woman is the equal of man in a thousand ways, and there being no

(33) Haydock v. Haydock, 34 N. J. Eq. 570; Disch et al. v. Timm et al., (Wis.) 77 N. W. 196.

(34) 85 Ill. 603.

(35) (Wis.) 77 N. W. 196.

"acid" test, so to speak, by which to ascertain real affection or the extent thereof, equity must take into account all of the facts and circumstances surrounding and permeating each case, in determining whether the confidential relation has been abused, in controversies between husband and wife pertaining to deeds of conveyances made to each other. It is a beautiful tribute to splendid American womanhood that the "women in the cases" heretofore commented upon are rare and vile exceptions and not the rule. But fraud, like murder, "will out," and justice does not plead in vain. The community of interest between husband and wife, the holiest union on earth, involving the most sacred and binding ties known to the human race, requires certain absolute duties and good faith on the part of both in their dealings with each other; and the *wife*, as well as the husband, who in furtherance of an evil motive, violates that confidence and takes advantage of that relationship to financially despoil the other, by obtaining deeds of conveyance or other transfers of property, through simulated love and false professions of affection and dishonest promises, should be required to make strict and complete accounting therefor by speedy process, in the tribunals of justice.

WALTER J. LOTZ.

Hammond, Indiana.

GARNISHMENT—BURDEN OF PROOF.

SILSBEE STATE BANK v. FRENCH MARKET GROCERY CO.

(Supreme Court of Texas. Dec. 14, 1910.)

A garnishing creditor of a depositor depositing money in a bank to his credit, followed by the word "agent," can only reach the fund if the depositor is the true owner, but the fact that the depositor is in possession and control of the fund is prima facie evidence of his ownership, and, in the absence of anything disclosing a principal, the creditor is entitled to a judgment against the bank.

Error from Court of Civil Appeals of First Supreme Judicial District.

WILLIAMS, J. Certified questions from the Court of Civil Appeals for the First District, as follows:

"This is an appeal from a judgment of the county court against appellant in a garnishment proceeding. The facts are, briefly, as follows: The French Market Grocery Company, judgment creditor of Ray Miller, sued out a writ of garnishment on the judgment against the Silsbee State Bank, which was on October 19, 1906, duly served upon the bank. Some time prior to this date Ray Miller had deposited with said bank certain money to the credit of 'Ray Miller, Agent,' and at the time of the service of the writ of garnishment there was a balance in the bank to the credit of this deposit sufficient to pay appellees' debt. On the same day of the service of the writ, and after it had been served, this balance was paid out by the bank on the check, or checks, of 'Ray Miller, Agent.' The garnishee answered fully under oath denying any indebtedness to Ray Miller. The answer was in the usual statutory form. The French Market Grocery Company filed its contest of the garnishee's answer under oath. Upon this state of the pleadings, the only evidence offered was that of the president of the bank, in substance showing the deposit of the money to the credit of 'Ray Miller, Agent,' and the payment of it on his check, as agent, after the service of the writ of garnishment as hereinabove set out. Upon this evidence the county court rendered judgment against the garnishee, which judgment was reversed by this court, which held that the money in the bank to the credit of 'Ray Miller, Agent,' was, prima facie, the property of some undisclosed principal, and not subject to his debt, and that the burden was upon the plaintiff in the garnishment proceeding to rebut this prima facie case of evidence showing that the money was in fact the property of Ray Miller. Upon this holding we reversed the judgment and remanded the cause.

"Upon motion for rehearing we are in doubt as to the correctness of our holding, and, as no appeal lies from our decision, we have thought it proper to certify to your honorable court the following question: Q. Were we correct in our holding?

The holding which the question asks us to review is stated to be "that the money in the bank to the credit of 'Ray Miller, Agent,' was, prima facie, the property of some undisclosed principal, and not subject to his debt, and that the burden was on the plaintiff in the garnishment proceeding to rebut this prima facie case by evidence showing that the money was in fact the property of Ray Miller." It is evident that all this rests upon the inference drawn by the court from the form in which the deposit was made and stated.

Our first impressions agreed with the opinion of the Court of Civil Appeals; but reflection and investigation have brought us to the conclusion that a negative answer should be given to the question. The authorities more nearly in point are in line with this conclusion; but their treatment of the subject has not been found entirely satisfactory to us. Proctor v. Greene, 14 R. I. 42; Randall v. Way, 111 Mass. 506; Laubach v. Leibert, 87 Pa. 62. We shall therefore state the reasons that to our minds seem controlling.

It is beyond question that a bank receiving a deposit, made as this one was, becomes bound and therefore entitled to treat the depositor as owner of the fund and to honor and pay his checks properly drawn without concerning itself with any question as to the ultimate ownership or as to the application made or to be made of the money drawn out. This doctrine has been stated with a discussion of the authorities in the following cases: National Bank v. Claxton, 97 Tex. 576, 577, 80 S. W. 604, 65 L. R. A. 820, 104 Am. St. Rep. 885; Coleman v. Bank, 94 Tex. 605, 63 S. W. 867, 86 Am. St. Rep. 871.

This is true regardless of the question whether the depositor is the owner in the fullest sense or had only the legal control as agent, over money really belonging to others. We do not think, therefore, that it is true, as broadly as it is laid down by some writers, that a garnishing creditor of the depositor is substituted in his stead and can reach the deposit merely because the bank was bound to treat him as owner. The depositor controls the fund whether he is the true owner or not. The garnishing creditor can reach it only in case he is the true owner. Even the bank, in some transactions, deals with him as owner at its peril; for if it apply the fund to his own benefit under his authority, when it belongs to others, it is held accountable to them because the form in which such deposits are made is held sufficient to excite inquiry. The solution of the question therefore is not to be found in an analysis of the legal relation between banker and depositor, but must be reached by determining the probative force of the facts shown. That which is decisive in our judgment is that the depositor is found in the full possession and control of the money deposited. This is prima facie evidence of title unless its effect as such is destroyed by his profession that he holds as agent, with nothing more to indicate the existence of a principal. A possession really held as agent is that of a principal. To whom could this possession be attributed but to Miller? That is the only one of which the creditor and the court knows anything, and we think it should be treated as being really his, as its mere existence indicates it to be. To hold otherwise would be to deprive a creditor of the chief evidence of the ownership of property by his debtor upon a mere declaration by the latter that it belongs to some undisclosed person who asserts no claim for himself. This view of such facts is involved in the reasoning of the case cited from Rhode Island, which is most in point, and sustains that decision as correct. That court considered circumstances not stated in this certificate and reached its conclusion from the whole case. The reasoning of Mr. Justice Agnew in the Pennsylvania case is also apposite, although the question was different and the conclusion questionable.

The answer to the question is, "No."

NOTE.—*Deposit by One Designating Himself "Agent" and Obligation of Bank in Garnishment.*—There are not very many cases to be found bearing on the question in the principal case, and such as we find we append. The conclusion rather seems to be that the true owner, if he appears, can claim the fund, but if nothing appears to show the bank that it is not the depositor's property, the designation of agent does not prevent the bank dealing with it as such. What notice may make a bank responsible for so treating it does not appear. In Pettey v. Dunlap Hardware Co. 99 Ga. 300, 25 S. E. 697, it was decided, that money to the credit of "P. agent" could be reached by garnishment served on a bank, and though the depositor be insolvent and the creditor notifies the bank that he will contend the money belongs to the depositor individually, injunction will not lie to prevent the bank paying it over, as the latter acts at its peril, if it does so.

In this case the bank answered denying indebtedness and its answer was traversed. It was not decided upon whom was the burden of proof, but it was said the plaintiff's remedy at law was complete. This it would be howsoever the rule on this subject might be, but the syllabus decision in saying the deposit can be reached by garnishment is some intimation that the burden was on the bank, though not strong.

The case of Alexander v. Wade, 106 Mo. App. 141, 80 S. W. 19, shows, that mere ability by indirect or fraudulent methods for one to control a fund deposited in bank is not the test of its being garnishable, but the real question is to whom that fund belongs. Thus where a fund was deposited for the commercial creditors of the seller of a place of business, under an arrangement with the purchaser, the commercial creditors afterwards ratifying that arrangement were entitled to the fund against garnishment by one not a commercial creditor, though the arrangement left it to the seller to identify those creditors.

In Ferry v. Home Savings Bank, 114 Mich. 321, 72 N. W. 181, 68 Am. St. Rep. 487, it was

held, that though a fund stands in the name of a third person as agent, yet if the bank knows, that it belongs to the defendant, and yet allows it to be withdrawn by the party in whose name it stands, it is liable as garnishee.

This case does not go so far as the Georgia case, *supra*, as there a mere notice to the bank of what the creditor's contention would be was sufficient to put the bank upon peril of payment. Here it was only held, that its actual knowledge made it liable.

In Frank v. Kurtz, 4 Pa. Super. Ct. 233, the principle is recognized that the fund on deposit may be proved in garnishment proceedings to be the property of another, but there seems such a presumption of ownership in depositor that he will not be permitted to show, in order to defeat the application of the fund to his debt, that it is the property of a third person who disclaims any ownership thereof.

In Jones v. Bank, 44 Pa. St. 253 there was garnishment of fund in the name of "J., agent" and the bank garnishee was allowed to show by defendant the agent, that he had no personal interest in the account, nothing on the books of the bank nor the way in which it was treated, showing it was not the property of the depositor. The only question discussed in the case was whether the depositor was incompetent by reason of interest, as the law then stood regarding competency of witnesses. The way, however, the case stood it seemed to be assumed that the burden was on the garnishee to show the fund was not that of the depositor. This case was prior to that of Frank v. Kurtz, *supra*, which seems to follow the same theory.

In Proctor v. Greene, 14 R. I. 42, an answer by a bank that there was a deposit in the name of defendant "agent" and the bank knew nothing of any principal, and it appearing that no one as principal ever claimed the deposit before or after garnishment, the court held the bank liable as garnishee. The court said: "In the absence of such claim or suggestion we cannot resist the conclusion that the money is really the defendant's, and that the purpose of the word "agent" affixed to his name, was to protect the fund from garnishment. Such devices are not infrequently resorted to by debtors to keep their property from being reached by creditors."

In Des Moines Cotton Mill Co. v. Cooper, 93 Iowa 654, 61 N. W. 1084, a garnishee bank set up the defense that all of the money on deposit was money which defendant, depositing as "E. J. Cooper, agent," was collected for others, and the court rendered judgment for the garnishee on the ground, that "if Cooper had commenced an action to recover the money in his own right, and the bank had interposed the defense that the money was trust funds and had introduced evidence, which was presented in this case, Cooper would surely have been defeated in his action." This case both shows the burden was on the bank, and that it had the option to present such evidence. What sort of notice would make it its duty to interpose such a defense might be another question. The court held also that the fact that the bank had allowed the depositor to draw on the deposit with his private check was unimportant. C.

CORAM NON JUDICE.

THE DOCTRINE OF HARMLESS ERROR.

In our present campaign for reform in procedure, we shall have much to say regarding the doctrine of harmless error, as we regard it as of the most significant importance in overcoming the legitimate public protest against "technical reversals."

Statutes on this subject are of two kinds. First, those that put the burden on the court and appellee to show that the error was harmless to secure an affirmance. Second, those that put the burden on the court and appellant to show that the error was harmful in order to secure a reversal.

The Oklahoma statute is of the first kind. Section 5618, Rev. Stat., says: "On an appeal the court must give judgment without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties."

The case of Byers v. Territory, 103 Pac. 532, construed this provision. The opinion is interesting, not for its valuable suggestion, but for the display of feeling, proving conclusively that lawyers and judges, as well as laymen, are impatient of reversals on purely technical grounds.

The court said: "It is the fixed purpose of this court to carry out the spirit of this statute; and, when a defendant has been properly charged with an offense, and fairly tried, and the evidence clearly establishes his guilt, this court will not reverse the conviction upon any technicality or exception which d'd not deprive the defendant of a substantial right. We cannot perform this duty without examining the entire record and going over the entire case. It is true that in the first instance the jury constitute the triers of the case; but, when a defendant by appeal brings a case to this court, and thereby invokes our judgment, we cannot act intelligently upon his appeal, and determine the application of the legal principle involved to the facts in the case, unless we carefully consider the evidence, and weigh it just as an intelligent jury should do upon the trial. If we cannot do this, then this court is a miserable and contemptible farce. The enforcement of the doctrine of harmless error in Oklahoma will greatly improve the character of our criminal trials. Lawyers will be compelled to try their cases upon their actual merits, and will cease devoting so much time in attempting to force technical errors into the record. The needless waste of much valuable time, and the expenditure of a great deal of money, will be saved, and far better results will be reached in the administration of justice, and the courts will gain the confidence and respect of the people, and acts of mob violence will cease to disgrace our state. The reversal of the just convictions of the guilty, upon purely technical questions, is the prime cause of want of confidence in the courts. This want of confidence often results in mob violence on the part of a long-suffering and outraged public. We have the highest possible authority for this statement, for we are told in the Bible that: 'Because sentence against an evil work is not executed speedily, therefore the heart of the sons of men is fully set in them to do evil.' Ecclesiastes viii, 1."

MERGER OF THE FEDERAL COURTS.

We have received many objections to the bill recently introduced in Congress to merge the Circuit and District Federal Court jurisdiction into the District Court. These objections have come largely from federal judges and we shall consider them at some future time.

We desire to note here a word of approval coming from our contemporary, "The National Corporation Reporter," as follows:

"A bill has been introduced in Congress by Representative R. O. Moon, of Pennsylvania, to confer all the original jurisdiction of the Circuit Courts of the United States on the District Courts, the effect of which will be to confine the duties of the Circuit Court judges to the appellate work in the Circuit Court of Appeals. We speak at second hand, as to the provisions of the bill, not having had an opportunity to examine it. The surprising thing is that the Circuit Court of the United States has not long ago been abolished. As a rule, the states have vested all judicial powers, except as to appeals, in one court of first instance, although a number of states maintain separate courts of chancery, and some courts maintain separate criminal courts. Where these separate courts are maintained, the law under which they are maintained, is probably due more to convenience than to any other consideration, as in Cook County, where the judges of the Circuit and Superior Courts sit as common law judges, as chancellors, or as judges of the Criminal Court of Cook county, although they are elected merely as judges of the circuit or superior courts. In other states, however, law judges are elected or appointed as such, and chancellors as such, and perhaps there are states in which judges are elected or appointed to try only criminal cases. In all such states, the division of judicial duties is a matter of convenience only. Since the act establishing the Circuit Court of Appeals of the United States, the district judges have been authorized to hold a circuit court, and most of the work of the circuit courts has been done by the district court judges. Thus we have the singular spectacle of two courts sitting at the same time,—the district court judge changing in an instant from a judge of the district court to a judge of the circuit court, as the clerk of one court or the other calls the motions presented to his particular court. The only reason for maintaining both courts is to provide salaries for two staffs of public officers in seventy-eight different districts, with the inevitable expense to the taxpayer. The time has come to consolidate the circuit court and the district court into one court, exercising all the powers of a court of first instance, whether the cause be at law, in chancery or under the criminal law, and it is to be hoped that Representative Moon's bill will be enacted into law."

We should be glad to have the views of lawyers who practice largely in the federal court on this proposed legislation.

THE MOST SACRED RULE OF LEGAL ETHICS.

The late lamented and honored Justice David J. Brewer left his profession no more beautiful remembrance than his statement of what to him was the most inviolable rule in the code of ethics. Justice Brewer said:

"It is the glory of our profession that its fidelity to its client can be depended on; that a man may safely go to a lawyer and converse with him upon his rights or supposed rights in any litigation with the absolute assurance that that lawyer's tongue is tied from ever disclosing it; and any lawyer who proves false to such an obligation, and betrays or seeks to betray any information or any facts that he has attained while employed on the one side, is guilty of the grossest breach of trust. I can tolerate a great many things that a lawyer may do—things that in and of themselves may perhaps be criticised or condemned when done in obedience to the interest or supposed interest of his own client, and when he is seeking simply to protect and uphold those interests. If he goes beyond, perhaps, the limits of propriety, I can tolerate and pass that by; but I cannot tolerate for a moment, neither can the profession, neither can the community, any disloyalty on the part of a lawyer to his client. In all things he must be true to that trust, or, failing it, he must leave the profession."

CORRESPONDENCE.

ACCURATE PLEADING ESSENTIAL.

Editor Central Law Journal:

In the issue of the Central Law Journal of the 6th inst., definite suggestions are, editorially, requested from practitioners and others in reference to reforms in legal procedure.

In looking over many years, my conclusion is that the difficulties in the way of safe and speedy administration of justice have been, in the main, in the crudity of practice acts and a want of thorough knowledge in law students of the rules of evidence. Our judges have been law-students.

In the fusion of legal and equitable remedies, we have lost in scientific accuracy and completeness as compared with the old, common-law and equitable systems of pleading. It is notorious that pleadings are often drawn with crudity and diffuseness. It is too much the tendency to permit imperfect pleadings. The reward for good pleading—beau pleader—is far away from what it was.

Issues, finely made and answered, simplify the evidence. No court can try a case as well as quickly or as safely on bad as on good papers.

In admissions to the bar thorough knowledge of the rules of evidence should be demanded. The lawyer who presents his case on the papers with the accuracy and science of Chitty or Story, and who knows the law of evidence, is in admirable shape to take care of his client and aid the Court.

I do not say that we must return to the old system of pleading; but I do say that our codes of pleading should be re-written and made as scientific a system of pleading as was either of the old systems.

D. C. ALLEN.

Liberty, Mo., Jan. 9th, 1911.

HUMOR OF THE LAW.

"You have a pretty tough-looking lot of customers to dispose of this morning, haven't you?" remarked the friend of a magistrate, who had dropped in at the police court.

"Huh!" rejoined the dispenser of justice, "you are looking at the wrong bunch. Those are the lawyers."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Action**—Separate Causes of Action.—Where a lease provided for the payment of rent in monthly installments in advance, plaintiff was entitled to maintain a separate suit for each installment as it matured.—Finnerty v. Hoppe, Mo., 131 S. W. 128.

2. **Adverse Possession**—Constructive Possession.—Legal title carries constructive possession under which the legal owner may hold the land without actual possession, as against the holder of a junior title.—Ramsey v. Thomas, Ky., 131 S. W. 11.

3.——Lands Subject.—Title to land outside of its right of way, purchased by a railroad for general prospective railroad purposes, may be acquired, as against the company, by adverse possession.—Delaware, L. & W. R. Co. v. Tobyhanna Co., Pa., 77 Atl. 811.

4. **Alteration of Instruments**—Materiality.—An alteration in a note so as to make it bear 8 per cent interest, which before the alteration bore 10 per cent interest, is a material alteration.—Commonwealth Nat. Bank of Dallas, Tex., v. Baughman, Okl., 111 Pac. 334.

5. **Appearance**—Service of Process.—Defendant, by appearing and demurring to an amended petition, waived the necessity of a new service upon filing the amendment, even if it set up a new cause of action against him.—Snow v. Rudolph, Tex., 131 S. W. 249.

6. **Assignments**—Assignment of Part of Claim.—Under the rule prohibiting the splitting of a cause of action, a part of a claim cannot be assigned without the debtor's consent.—Swift & Co. v. Wabash R. Co., Mo., 131 S. W. 124.

7.——Choses in Action.—A contract for the erection of a brick plant and furnishing of gas free for fuel and light purposes held assignable.—Minnetonka Oil Co. v. Cleveland Vitrified Brick Co., Okl., 111 Pac. 326.

8.——Property Included.—Where plaintiff placed claims in P.'s hands for collection, including claims not intended to be so placed, and thereafter assigned all the claims in P.'s hands to defendant, he was entitled to those not intended to be placed in P.'s hands.—Kentucky Refining Co. v. Wagener, Ky., 131 S. W. 188.

9. **Bankruptcy**—Discharge.—A bankrupt, who, while insolvent, but more than four months before his bankruptcy, concealed property with intent to defraud his creditors, and kept the same concealed until the four-month period, "concealed" it within the four months within the meaning of Bankr. Act.—In re James, 181 Fed. 476.

10.——Insurance Policies.—Where, on the intervention of bankruptcy, one of the bankrupts had certain policies on which the insurance company had loaned a sum equal to the full surrender value, the policies did not pass to the bankrupt's trustee.—Burlingham v. Crouse, 181 Fed. 479.

11. **Banks and Banking**—Regulation by State.—Banking and other pursuits may be regulated in the public interest.—Marymont v. Nevada State Banking Board, Nev., 111 Pac. 295.

12. **Benefit Societies**—Increase of Rates.—A mutual benefit society, both under its certificates and independent thereof, held entitled to pass new laws providing for rerating of members and increasing the amount of monthly premiums.—Supreme Ruling of Fraternal Mystic Circle v. Ericson, Tex., 131 S. W. 92.

13. **Bills and Notes**—Stipulations.—The court of Arkansas will not enforce a stipulation in a note for the payment of an attorney's fee and costs for the collection thereof, though the stipulation is valid in the state where the note was executed and made payable.—White-Wilson-Drew Co. v. Egelhoff, Ark., 131 S. W. 208.

14.——Suits.—The maker of a note held a necessary party to a suit by the payee to recover from a subsequent indorser the amount of a judgment recovered against the payee as indorser.—Lynch v. Loftin, N. C., 69 S. E. 143.

15. **Cancellation of Instruments**—Adequacy of Legal Remedy.—One is not entitled to rescind a contract in equity if he has an adequate remedy at law, but may rescind for repudiation of the contract or a breach thereof going to its essence, unless the resulting damages can be determined with reasonable certainty.—Callanan v. Powers, N. Y., 92 N. E. 747.

16.——Undue Influence.—Setting aside a deed as obtained by undue influence held not to affect bona fide purchasers.—Hoeb v. Maschinot, Ky., 131 S. W. 23.

17. **Carriers**—Duty to Assist Passenger in Alighting.—Ordinarily it is not the duty of employees of a carrier to physically assist passengers in alighting from a passenger train, but the duty may arise from special circumstances.—Central of Georgia Ry. Co. v. Madden, Ga., 69 S. E. 165.

18.——Interchangeable Mileage Ticket.—A stipulation in an interchangeable mileage ticket held a part of the contract evidenced by the ticket, and a tender on train of mileage coupons is allowable only in accordance with its terms.—Des Portes v. Southern Ry. Co., S. C., 69 S. E. 148.

19.——Shipment of Goods.—A carrier, after receiving goods for shipment, having agreed

that it would endeavor to change course of shipment and destination, held liable for negligent failure to use reasonable effort to do so.—Cincinnati, N. O. & T. P. R. Co. v. Steele, Ky., 131 S. W. 22.

20. **Charities**—Varying Terms of Trust.—A court of equity has power to vary the precise terms of a charitable trust, when necessary.—In re Kramph's Estate, Pa., 77 Atl. 814.

21. **Contracts**—Construction.—Where a contract is in writing, the writing must be held to govern the construction thereof, unless error therein is alleged and clearly shown.—Winston Bros. & Co. v. Louisiana Cent. Const. Co., La., 53 So. 367.

22.——Detection of Fraud.—A party undertaking to secure, on the ground of fraud, restoration of the consideration which supported an executed contract, held not entitled to prevail where he could, by the exercise of ordinary prudence, have detected the fraud.—Brandt v. Krogh, Cal., 111 Pac. 275.

23.——Parties to Action for Breach.—One of two persons with whom defendant contracted to sell land and divide the profits could upon purchasing the other's interest in the contract sue defendant thereon.—Snow v. Rudolph, Tex., 131 S. W. 249.

24. **Constitutional Law**—Municipal Franchises. A municipal franchise permitting a railroad company to construct its road on a street and an alley is not a deprivation of abutting property without due process of law.—McCammon & Lang Lumber Co. v. Trinity & B. V. Ry. Co., Tex., 131 S. W. 85.

25.——Obligation of Contract.—A public service corporation cannot disable itself by private contract from performing the law, so as to be able to claim that such law violates such contracts. Const. art. 1, § 17.—Southwestern Telegraph & Telephone Co. v. City of Dallas, Tex., 131 S. W. 80.

26. **Conversion**—Equitable Conversion.—A will may convert testator's realty into personalty in such a manner as that the beneficiaries will take no part of the realty, but only a part of the proceeds of a sale thereof by the executor or trustee.—Hanson v. Hanson, Iowa, 127 N. W. 1032.

27.——Management of Estate.—Where an executor exercises the discretionary power of sale of real estate conferred on him by the will, the proceeds become personal property in his hands at least for the payment of debts.—Personeni v. Goodale, N. Y., 92 N. E. 754.

28. **Corporations**—A corporation accepting and not repudiating any of the benefits of a contract held not entitled to urge that the officers making the contract acted beyond the scope of their authority.—Kansas City, M. & O. Ry. Co. of Texas v. City of Sweetwater, Tex., 131 S. W. 251.

29.——Consolidation.—Purchase of property and franchise of one corporation by another does not constitute a consolidation.—Supreme Ruling of Fraternal Mystic Circle v. Ericson, Tex., 131 S. W. 92.

30.——Heating Companies.—A heating company is a public service corporation.—State v. Marion Light & Heating Co., Ind., 92 N. E. 731.

31.——Right to Sue in Corporate Name.—A contract made by corporate promoters held a valid obligation of the corporation after its organization by having been adopted by it, so that the corporation was entitled to sue for its breach.—Richard Brown & Son Contracting Co. v. Bambrick Bros. Const. Co., Mo., 131 S. W. 134.

32.——Seals.—A deed with mere scrolls affixed after the signatures of the members of the corporation held a good corporate conveyance.—Phillips v. Insley, Md., 77 Atl. 850.

33. **Counties**—Contracts.—Contracts of county commissioners held not binding where entered into by them without strict compliance with the statutes.—Green v. Okanogan County, Wash., 111 Pac. 226.

34. **Covenants**—Warranty.—Gen. St. 1906, § 2450, giving the effect of the full common-law covenants to a specified warranty in a deed being in derogation of common law, held to be strictly construed.—Van Ness v. Royal Phosphate Co., Fla., 53 So. 381.

35. **Criminal Law**—Weight of Evidence.—An instruction that a witness willfully false in a material part of his testimony is to be distrusted in others held not on weight of evidence.—People v. Davis, Cal., 111 Pac. 268.

36. **Deeds**—Restrictive Covenants.—Restrictions of the use of the fee in conveyances are strictly construed, and any doubts as to their construction are resolved in favor of the grantee's free use of the property, though the plain intention of the parties as gathered from the covenant construed as a whole must control.—Kitchen v. Hawley, Mo., 131 S. W. 142.

37.——Undue Influence.—Whether undue influence was exerted to obtain a conveyance is a question of fact, to be determined from the circumstances.—Hoeb v. Maschinot, Ky., 131 S. W. 23.

38. **Descent and Distribution**—Common Law.—At common law collateral inheritance was not permitted as to land.—Raines v. Sullivan, N. C., 69 S. E. 133.

39. **Dower**—Estoppel to Assert.—A married woman cannot estop herself from asserting dower, except where to permit her to assert her claims will operate as a fraud.—Syck v. Hellier, Ky., 131 S. W. 30.

40. **Eminent Domain**—Right to Exercise.—A grant of power of eminent domain can be made only when the taking is for a public purpose within the Constitution.—Deerfield River Co. v. Wilmington Power & Paper Co., Vt., 77 Atl. 862.

41. **Evidence**—Admissibility.—In a prosecution for killing an officer while attempting to serve a warrant, the warrant held admissible in evidence.—Rushing v. State, Ga., 69 S. E. 171.

42.——Declaration.—Declarations of a party can bind no one but himself unless they are made in his capacity as an agent of another, and are within the scope of his authority as agent.—Brandt v. Krogh, Cal., 111 Pac. 275.

43.——Parol Evidence.—Parol evidence is admissible to show that a note materially different from that described in a chattel mortgage is a renewal of the latter, and, in fact, secured by the mortgage.—Caldwell v. Sisson, Mo., 131 S. W. 140.

44. **Executors and Administrators**—Payment of Legacies.—Legacies out of the estate over which testatrix had the power of appointment should be paid in kind.—Harrison v. Denny, Md., 77 Atl. 837.

45. **Fire Insurance**—False Representations.—An insured may assume that the company made

inquiries relating to every material fact affecting the risk, and it must appear that a concealment of material facts was intentional and fraudulent, as well as material to bar a recovery.—Continental Ins. Co. v. Ford, Ky., 131 S. W. 189.

46. **Forgery**—Indictment.—An indictment charging the forgery of an entire instrument held not objectionable for failure to allege the alterations claimed to constitute the forgery.—Bennett v. State, Ark., 131 S. W. 213.

47. **Fraud**—Release.—Actionable Fraud.—Fraudulent representations cannot be predicated on a mere expression of opinion, however erroneous it may be or positively stated.—Brandt v. Krogh, Cal., 111 Pac. 275.

48.——Release.—One seeking the cancellation of a release because of fraud antecedent to the execution thereof and inducing the execution held required to pay or offer to pay the amount received thereunder.—Malkmus v. St. Louis Portland Cement Co., Mo., 131 S. W. 148.

49. **Frauds, Statute of**—Written Contracts.—A written contract required by law to be in writing may not be abrogated by a parol, unless accompanied by acts of part performance sufficient to take it out of the statute of frauds.—Thill v. Johnston, Wash., 111 Pac. 225.

50. **Fraudulent Conveyances**—Conveyance of Life Estate to Wife.—A conveyance by a husband to his wife in pursuance of an antenuptial promise held not in fraud of creditors, though admittedly received by the wife with the intent that a creditor should not get any of the land.—McKnight v. Kingsley, Ind., 92 N. E. 743.

51. **Garnishment**—Liquidated Claims.—A claim to form the basis of garnishment must be a claim for an ascertained amount of liquidated indebtedness.—Blick v. Mercantile Trust & Deposit Co. of Baltimore, Md., 77 Atl. 844.

52. **Highways**—Obligation of Travelers.—The common-law rule requiring each traveler on a highway to use ordinary care to prevent or avoid inflicting injury held not abrogated by St. 1903, c. 473, relating to the duties of operators of automobiles.—Trombley v. Stevens-Duryea Co., Mass., 92 N. E. 764.

53. **Homicides**—Dying Declarations.—Dying declaration, tending to show that an injury was accidently inflicted, held admissible in behalf of defendant.—Flanagan v. State, Ga., 69 S. E. 171.

54.——Justifiable Homicide.—To deliberately kill in revenge for a past injury, after reason has had time to resume its sway, cannot be justified.—Mize v. State, Ga., 69 S. E. 173.

55. **Husband and Wife**—Joint Transactions.—A wife having signed the original and substituted notes under a chattel mortgage, it may be inferred that she was present and consented to a continuation of the lien as security therefor.—Caldwell v. Sisson, Mo., 131 S. W. 140.

56. **Indictment and Information**—Presumption of Regularity.—There is a presumption of regularity where the indictment states that the grand jury had been impaneled, sworn and organized.—State v. McKowen, La., 53 So. 353.

57.——Sufficiency of Accusation.—Information for offense under a statute must negative every hypothesis and every presumption of innocence under which the act alleged would be lawful.—State v. Renkard, Mo., 131 S. W. 168.

58. **Insane Persons**—Sale of Land.—A purchaser of a lunatic's realty at a judicial sale by the lunatic's commissioner is not bound to look beyond the decree if the facts necessary to give the court jurisdiction appear on the face of the proceedings.—Rexford v. Brunswick-Balke-Collender Co., 181 Fed. 462.

59. **Fire Insurance**—Burden of Proof.—The burden is on a mutual fire insurance company to prove that a legal assessment was made where it seeks to work a forfeiture of the policy for nonpayment of an assessment.—Settle v. Farmers' & Laborers' Co-operative Ins. Assn. of Monroe County, Mo., 131 S. W. 136.

60. **Intoxicating Liquors**—Local Option Law.—In prosecutions for a violation of the anti-liquor law, no question of good faith or of intent is involved.—Gourley v. Commonwealth, Ky., 131 S. W. 34.

61.——Unlawful Sale.—Where one convicted of violating the local option law more than once has given bond for good behavior, his subsequent conviction does not bind the surety; action on the bond being necessary.—Allen v. Commonwealth, Ky., 131 S. W. 6.

62. **Landlord and Tenant**—Surrender of Leased Premises.—To justify a surrender of leased premises, there must be, in addition to an offer to surrender, an abandonment by the lessee and a resumption of the possession by the lessor.—Young v. Berman, Ark., 131 S. W. 62.

63. **Libel and Slander**—Libelous Publication.—Alleged libelous statements contained in an affidavit in support of a motion for new trial held privileged, though malicious.—Perry v. Perry, N. C., 69 S. E. 130.

64. **Life Estates**—Improvements.—A life tenant cannot lay out money or labor in improving the land at the expense of the remainderman.—Wilson v. Hamilton, Ky., 131 S. W. 32.

65. **Life Insurance**—Breach of Contract.—A breach by a life insurance company of a contract made in a policy to make a loan to the insured is not a repudiation of the insurance contract, which entitled the insured to rescind and recover back the premiums paid.—Lewis v. New York Life Ins. Co., 181 Fed. 433.

66.——Fraud in Obtaining.—Willful fraud in obtaining life insurance held, to be a defense to action on the policy, only if about a matter which actually contributed to insured's death.—Lynch v. Prudential Ins. Co. of America, Mo., 131 S. W. 145.

67.——Increasing Hazard.—Employment as fireman on a railway yard switching engine is "service in switching cars," within a life policy provision exempting insurer from liability on insured entering such service.—Diseker v. Equitable Life Assur. Society of United States, S. C., 69 S. E. 153.

68. **Judgment**—Amendments.—Judicial errors committed by the court in the rendition of a judgment cannot be corrected under the guise of an amendment of its record.—Forrester v. Lawler, Cal., 111 Pac. 284.

69.——Conclusiveness.—To render a judgment in one action conclusive in a subsequent one, it must appear that the particular matter sought to be concluded was raised and determined in the prior suit.—Fogel v. Butler, Ark., 131 S. W. 211.

70.——Conclusiveness.—A matter once finally adjudicated precludes the parties to the action from raising it again, but to be a bar the adjudication must be on the merits.—Swing v. Karges Furniture Co., Mo., 131 S. W. 153.

71.——Validity.—Where a proceeding embraces two causes of action, one of which is within and the other without the court's jurisdiction, judgment on both causes is valid as to the subject-matter within the jurisdiction.—Rexford v. Brunswick-Balke-Collender Co., 181 Fed. 462.

72. **Mandamus**—Subjects of Relief.—Mandamus held to lie to compel a heating company to furnish heat for a public library building where the company's franchise was granted on condition that it furnish such service.—State v. Marion Light & Heating Co., Ind., 92 N. E. 731.

73. **Master and Servant**—Assault by Servant.—A master who retains a servant after he has, for his own purpose, committed an assault, does not thereby ratify such prior act of the servant.—Everingham v. Chicago, B. & Q. R. Co., Iowa, 127 N. W. 1009.

74.——Fellow Servants.—A foreman and a workman engaged in the common employment of removing a pile driver held fellow servants.—McKillop v. Superior Shipbuilding Co., Wis., 127 N. W. 1053.

75.——Safe Place to Work.—An employer's duty to provide a safe place to work does not extend to ordinary conditions, in which the danger can be seen and avoided by employee's reasonable care.—Warwick v. Lumberton Cotton Oil & Ginning Co., N. C., 69 S. E. 129.

76.——Set-Off Against Employee.—An employer, when sued by an employee for services, held entitled to set off a claim against the employee.—Flat Lick Stave Co. v. Kinningham, Ky., 131 S. W. 6.

77. **Mechanics' Liens**—Right to Enforce.—A materialman directing the owner to pay the contractor held not entitled to enforce a lien for his claim.—Capital Lumber & Mfg. Co. v. Crutcher, Ky., 131 S. W. 176.

78. **Reformation of Instruments**—Mistake.—Where a vendee intended to take title in the name of himself and wife, but by mistake took a conveyance to himself alone, equity will not reform the deed.—Langley v. Kesler, Or., 111 Pac. 246.

79. **Mortgages**—Conveyance by Mortgagor.—Where real estate is conveyed subject to a mortgage, which the mortgagee assumes, satisfaction of the mortgage held to release the mortgagor from the mortgage debt.—Heidahl v. Geiser Mfg. Co., Minn., 127 N. W. 1050.

80.——Trust Deed.—In selling under a trust deed, the trustee must strictly follow the terms of the deed, and the details prescribed as to the manner of the sale must be literally pursued.—Chamberlain v. Trammel, Tex., 131 S. W. 227.

81. **Municipal Corporations**—Obstructions in Street.—Stone steps within the limits of a street leading to an abutting building are an indictable nuisance at common law, where they interfere with the public easement.—Smith v. Adams, Mass., 92 N. E. 760.

82.——Action on Police Officer's Bond.—A person wrongfully arrested by a policeman held not entitled to maintain an action against the surety on the policeman's bond, where the right was not conferred by statute.—United States Fidelity & Guaranty Co. v. Crittenden, Tex., 131 S. W. 232.

83.——Grant of Right to Use Street.—A city may grant to a railroad the right to use streets for its road in consideration of it establishing and keeping its general offices and shops in the city.—Kansas City, M. & O. Ry. Co. of Texas v. City of Sweetwater, Tex., 131 S. W. 251.

84. **Negligence**—Imputed Negligence.—Contributory negligence of child 14 years old in its care of child 6 years old held imputable to the parents.—Gress v. Philadelphia & R. Ry. Co., Pa., 77 Atl. 810.

85.——Proximate Cause.—Where the accident complained of would have occurred, though there had not been any negligence of a person, his negligence is not the proximate cause of the accident.—O'Connell v. Missouri Pac. Ry. Co., Mo., 131 S. W. 117.

86.——Violation of Ordinance.—Where an injury was caused by failure to comply with an ordinance, the ordinance is admissible as evidence of negligence.—Fane v. Philadelphia Rapid Transit Co., Pa., 77 Atl. 806.

87. **Officers**—Disqualification.—Where an appointment of a county officer was void, it could not be validated by recognition or ratification.—Meglemery v. Weissinger, Ky., 131 S. W. 40.

88. **Parent and Child**—Emancipation.—Where a minor son contracts for his services on his own account, and his father having knowledge thereof, does not object, there is an implied emancipation of the son.—Lowrie v. Oxendine, N. C., 69 S. E. 131.

89. **Partnership**—Dissolution.—The renewal of a firm note by one partner after the dissolution of the firm without notice to the payee of the dissolution is binding on the copartner, though he is without knowledge of the renewal.—Seufert v. Gille, Mo. 131 S. W. 102.

90. **Patents**—Interference Suit.—A bill apparently framed for relief against an interfering patent, and also to obtain a reissue, and to which the Commissioner of Patents is made a party defendant, held multifarious.—Gold v. Gold, 181 Fed. 544.

91.——Validity.—An abandonment of an invention after the filing of an application for a patent, upon which a patent was subsequently granted, must be established by clear proof showing an intention to abandon, especially where the invention is a meritorious and valuable one.—McDuffee v. Hestonville, M. & F. Pass. Ry. Co., 181 Fed. 503.

92. **Payment**—Requisites.—The acceptance by a contractor for work of notes of a third party for sums which have become due under his contract do not operate as a payment of the debt in the absence of an agreement to that effect, either express or to be inferred plainly from the circumstances and conduct of the parties.—Bankers' Trust Co. of New York v. T. A. Gillespie Co. of New Jersey, 181 Fed. 448.

93. **Penalties**—Statutes.—Proof to make a case within the provisions of penal statutes must be specific.—State ex rel. Simpson v. Quincy, O. & K. C. R. Co., Mo., 131 S. W. 161.

94. **Pledges**—Foreclosure.—Though a note and chattel mortgage securing it are but collateral security, the holder of the principal obligation may foreclose the pledge without action on the principal obligation.—Kreling v. McMullen, Cal., 111 Pac. 252.

95.——Sale.—Where the pledge contract authorizes either a public or private sale of the pledged property, public notice must be given thereof if the sale is public.—Amarillo Nat. Bank v. Harrington, Tex., 131 S. W. 231.

96. **Principal and Agent**—Authority of Agent.—The power to convey title is not essential to enable an agent for the sale of land to make an executory contract to convey.—Donnell v. Currie & Dohoney, Tex., 131 S. W. 88.

97.——Delivery of Uncompleted Instrument.—The act of one in filling in the amount of a note in the presence of another authorized to do so held the act of the latter so as to bind the maker.—White-Wilson-Drew Co. v. Egelhoff, Ark., 131 S. W. 208.

98.——Performance of Acts by Agent.—The rule that an agent cannot intrust the performance of acts confided to him to another held applicable only to matters in which he exercises discretion or judgment.—White-Wilson-Drew Co. v. Egelhoff, Ark., 131 S. W. 208.

99.——Scope of Agent's Authority.—What a witness saw an agent do was evidence on an issue of the scope of his authority.—Beaucage v. Mercer, Mass., 92 N. E. 774.

100. **Process**—Amendment.—Omission of a seal from a summons addressed to an officer of another county held subject to amendment, which, when made, would validate all the proceedings thereunder as affecting the original parties.—Calmes v. Lambert, N. C., 69 S. E. 138.

101.——Power to Issue.—Where there is power in a court to hear and determine a case, there is also a power to issue process to enforce its orders.—Commonwealth v. New York Cent. & H. R. R. Co., Mass., 92 N. E. 766.

102. **Railroads**—Communicated Fires.—In an action against a railroad for a fire communicated by a locomotive, evidence of other fires communicated by other locomotives held admissible.—McGill Bros. v. Seaboard Air Line Ry. S. C., 69 S. E. 156.

103.——Duty to Look and Listen.—One approaching a railroad highway crossing must look and listen, and, if necessary in order to see and hear, must stop before crossing.—Grand Trunk Western Ry. Co. v. Reynolds, Ind., 92 N. E. 733.

104.——Right to Use Street.—The granting by a city to a railroad of a right of way through streets for its road is a sufficient consideration for an agreement by the railroad to establish and keep its general offices and shops in the city.—Kansas City, M. & O. Ry. Co. of Texas v. City of Sweetwater, Tex., 131 S. W. 251.

105. **Receivers**—Appointment.—A receiver cannot be appointed when no advantage will be gained thereby.—Grandfalls Mut. Irr. Co. v. White, Tex., 131 S. W. 233.

106. **Religious Societies**—Doctrine of Belief.—The General Assembly of the Cumberland Presbyterian Church having determined that the doctrines of the Presbyterian Church in the United States of America as promulgated in the amended Confession of Faith of 1903 was substantially similar to its own held conclusive on the courts.—Sanders v. Baggerly, Ark., 131 S. W. 49.

107. **Sales**—Oral Warranty.—One sued for price of goods held entitled to show he bought them on an oral guaranty, where it is not contradictory of the written order, which does not purport to be the whole contract.—Eastern Granite Roofing Co. v. Princeton Storage Co., Ky., 131 S. W. 194.

108. **Specific Performance**—Contract to Convey.—A contract to convey, though established, will not be enforced unless equitable.—Ross v. Ross, Iowa, 127 N. W. 1034.

109.——Contracts Founded in Fraud.—A court of equity will under no circumstances enforce or permit to be enforced the terms of a contract founded in fraud, though there existed and were accessible to the party defrauded the means and opportunity to detect the fraud by the exercise of ordinary prudence.—Brandt v. Krogh, Cal., 111 Pac. 275.

110. **Street Railroads**—Negligence.—A motorman, driving his car at an excessive speed, held not entitled to excuse his inability to stop the car to avoid an accident by showing that he used his utmost effort to do so.—Williams v. Kansas City Elevated Ry. Co., Mo., 131 S. W. 115.

111. **Trespass**—Right to Sue.—One in exclusive possession of land under color of title can maintain trespass quare clausum fregit against a mere wrongdoer, even before his title matures.—Simmons v. Defiance Box Co., N. C., 69 S. E. 146.

112. **Trial**—Correction of Verdict.—A jury, misunderstanding the instructions, may be sent back to the jury room to correct the verdict to conform to the instructions.—Louisville Water Co. v. Schlotz, Ky., 131 S. W. 192.

113. **Trusts**—Testamentary Trusts.—Testamentary trustees held impliedly authorized to sell property to satisfy legacies, if they cannot be set apart in kind as intended by testatrix.—Harrison v. Denny, Md., 77 Atl. 837.

114. **Vendor and Purchaser**—Rights of Purchaser.—One who made improvements on property of which his grantor's grantor held the legal title as security for the purchase price held not entitled to recover for improvements made upon the property without such remote grantor's consent.—Green River Chemical Co. v. Iler, Ky., 131 S. W. 174.

115.——Reservations in Deed.—A reservation in a deed of three acres held too indefinite to affect a purchaser from the grantee.—Kerr v. Belcher, Ky., 131 S. W. 177.

116. **Waters and Water Courses**—Easements.—A deed to the state for the sole purpose of using water power created on the premises by a canal conveyed a mere easement.—Thieme & Wagner Brewing Co. v. Poling, Ind., 92 N. E. 746.

117. **Wills**—Devises.—Since a devise took effect from testatrix's death, the devisee was entitled to the income from that time, deducting all proper charges.—Harrison v. Denny, Md., 77 Atl. 837.

118.——Intention of Testator.—In ascertaining testator's intention, the court may consider how he was circumstanced, the condition of his family, and his relationship to those taking under his will.—Herring v. Williams, N. C., 69 S. E. 140.

119.——Validity.—Where property is devised absolutely, with power of unlimited disposition, a subsequent provision, undertaking to devise over the undisposed remainder, is void.—Nelson v. Nelson's Ex'r., Ky., 131 S. W. 187.

120. **Witnesses**—Privilege of Accused.—While accused, as a witness, may decline to answer incriminating questions, he may be made to decline before the jury.—State v. McKowen, La., 53 So. 353.